



ZONING BOARD OF ADJUSTMENT
Draft Minutes

February 22, 2022 - 7:00 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department) Live
Broadcast: WCTV Channel 20 – Local Cable TV
Live Stream: <http://www.wctv21.com/>

Attendance:

Chairman Mike Scholz- present
Vice Chair Nick Shea- present
Pam Skinner, Secretary- present
Michelle Stith, regular member- present
Neelima Gogumalla, regular member- present
Betty Dunn, alternate- present

Staff:

Julie Suech, Planning Technician
Chris Sullivan, Planning Director
Anitra Lincicum, minute taker (present via Zoom)

Call to Order

Public Hearing

Case #57-2021: Parcel(s) 18-L-300 (continued from January 11, 2022)

Applicant – The Dubai Group, Karl Dubay

Owner – Angle Wood Pond Realty Trust, Inc.

Location – 1-3 Sharma Way (aka 55 Range Road)

Zoning District – Professional, Business and Technology, Residential A & WPOD

Variance relief is requested from Section(s) 603.1.1 & 614.2 to permit 100 two-bedroom townhomes, arranged in fourplexes, where this particular type and configuration of residential use is not allowed in the PBT, RDA & WPOD zones.

Ms. Skinner read the case into the record; this is a continuation from January. The list of abutters was read previously.

Mr. Karl Dubay addressed the Board. Mr. Dubay stated that they went through the bulleted list in order to try and answer the questions brought forward at the previous meeting: traffic study, fiscal impact information, property differentials, and confirmatory information from the SAU to see the number of projected school kids from that development. Mr. Dubay provided a supplemental memo regarding the criteria as well.

Mr. Morgan Hollis addressed the Board and is representing the applicant and they have been submitted as exhibits to the memorandum. Mr. Hollis stated that this has been zoned this way for a number of years. Mr. Hollis stated that the traffic relates to the health, safety and welfare. Mr. Dubay stated that they are half the density than previously proposed. Mr. Dubay stated that they have 3D renderings so that they can see the buildings. Chairman Scholz asked if there was a map that shows the boundary of the 2 districts. Chairman Scholz stated that it is outlined on page 4. Mr. Dubay went into further detail around how many students they projected might be in each condo as an estimate. Chairman Scholz asked the market rate in today's market. Mr. Dubay stated that he could get another letter from a broker and he thought these units might sell in the high \$700,000 range.

Chairman Scholz invited public comment

Mr. Tom Earley, 14 Westchester Rd. addressed the Board. Mr. Earley stated that he is here as a resident, not a Planning Board member this evening. Mr. Earley stated that the voters voted to make this a commercial property and he does think this is a voter issue and needs to go in front of the voters to change this zone from a commercial to a residential district. Mr. Earley stated that this is zoned PBT and there is not too set for this zone to have regulations around residential property in a PBT district. Mr. Earley stated that there is a different set of tools and rules that govern a residential district and these have not been determined. Mr. Earley stated that the evaluation that was done was built in the 80s but these are much larger condos with a bonus room and an unfinished basement. Mr. Earley stated that he sees these condos as different from those condos built in the 80's and he is concerned they will be a larger burden on the schools than projected by the applicant. Mr. Earley stated that he understands that there are on decisions being made this evening.

Mr. Earley stated that he understands that Vice Chair Shea is related to a realtor who has dealing with Dr. Sharma. Vice Chair Shea stated that he does not have a relationship with his father, Mr. Harry Shea who does represent Mr. Sharma. Chairman Scholz says that he understands Vice Chair Shea was not obligated to share that information. Vice Chair Shea stated he does not have a business relationship with his father or a personal relationship with his father. Chairman Scholz appreciates what Vice Chair Shea disclosed and the discussion and standard for recusing oneself as a Board member.

Chairman Scholz asked when the communication was with the SAU. Mr. Earley stated that it was in September. Mr. Earley reiterated that the tolerances for new students were very thin, especially at Golden Brook.

Mr. Kristi St. Laurent, stated that she chairs the Economic Development Committee. Ms. St. Laurent stated that changing this over to a residential district completely changes this intent of the district from what was voted on by the voters. Ms. St. Laurent stated that there are many businesses in the PBT that cannot be done remotely; those were listed out by Ms. St. Laurent. Ms. St. Laurent stated that this proposal flies in the face of the previously designed master plan and the will of the voters in the PBT district.

Mr. Dubay stated that the square footage in 1870 to 2400 square feet which is not double to what was built in the 80's as Mr. Earley contends. Mr. Dubay stated that these are high end units that are really not built for families with young kids. Mr. Dubay stated that his opinion is that the schools are not at capacity and he is not sure where to go to gather more information but he will try to gather more information about that topic. Mr. Dubay stated that the fact of the matter is that a restaurant will not be interested in relocating without sewer for their site. Mr. Dubay is interested in going to the Economic Development Committee; he would like for them to comment on this plan.

Ms. Gogumalla asked if they could have an idea as to when the comp properties were built. Mr. Dubay stated that there is evidence to support that those people who move into this area will not be a burden on the public school system; they will likely have different community needs. Ms. Gogumalla asked Mr. Dubay to come back prepared to talk about why Mr. Dubay would like to proceed with a mainly residential plan. Mr. Dubay stated that this a split zone and it appears to be designed for specific users. Mr. Dubay stated that in some discussions, he had been told by potential commercial clients that the lack of frontage and sewer are two potential issues with the site.

Chairman Scholz asked where the end of the property was on the plan. Mr. Dubay stated that everything is porous pavement and there are 2-way streets on a 24-foot-wide street. Mr. Dubay stated that the units would have full size garages.

The Chair invited limited public rebuttal at this time.

Mr. Earley stated that the concept that “big pharma” will not come to town because of septic may not be entirely true. Mr. Earley contends that there are businesses that are clamoring to come here. Chairman Scholz asked if they were seeing any effect at all, regardless if it is negative or positive. Mr. Earley stated that he believes that the applicant is looking for highest and best use. Mr. Earley and Chairman Scholz discussed the development that is happening at Exit 1 in Salem in the next town and how this expansive site varies from the PBT district they are currently discussing. Mr. Earley stated that they have a population of outside businesses who would like to come to Windham; you cannot fault a property owner for looking for highest and best use.

A motion was made by Ms. Stith to continue Case #57 to March 29th, 2022 at 7pm. Seconded by Ms. Skinner. Vote 5-0. Motion passes.

Case #59-2021: Parcel 13-A-198 (continued from January 11, 2022)

Applicant – The Dubay Group, Karl Dubay

Owner – AFS Realty, LLC

Location – 1 Industrial Drive

Zoning District – Limited Industrial & WPOD

Variance relief is requested from Section 401 and Section 606.1 to expand the existing school by adding an approximately 12,000 SF single story building where such use is not allowed in the Limited Industrial District.

Mr. Dubay stated that there were letters submitted from the public who are parents of students at Windham Academy.

The Board and Mr. Dubay discussed that two abutters wrote a letter and they might be here and it might be an issue of traffic and safety. Mr. Dubay stated that they did go before TRC. Mr. Dubay stated that right now the school is grades K-6. Mr. Dubay stated that they are only adding their last 2 grades. There are 293 students spread out over 7 grades and the school would be adding 2 more grades. Mr. Dubay stated that the school would not have enough room for 500 students. Mr. Dubay stated that they will be expanding the campus. Mr. Dubay stated that this industrial park has changed over the 30 years. Mr. Dubay stated that there are a lot of other things in this area other than trucks.

Ms. Gogumalla stated that she is concerned that there is only one exit and one entrance. Mr. Dubay stated that there are a lot of things they can do to improve the traffic such as painting the driveways in the area. Mr. Dubay stated that the traffic report is still overstating their traffic by 200%. Ms. Dunn asked why Mr. Dubay submitted a traffic report that he believed to be inaccurate or incorrect. Mr. Dubay stated that he had a responsibility to respond to the traffic study submitted but it was submitted by an abutter, not him. Chairman Scholz asked if there had been an increase in the number of drop offs since the report. Mr. Dubay stated that there is some carpooling but it is

about 1 trip per kid on average. Ms. Stith asked if there was a way to absorb those trips into the plan and potentially makes the loop larger. Mr. Dubay stated that making the loop larger and staggering the start times has helped.

Mr. Dubay stated that he is willing to pay for an additional traffic study before the next meeting. Chairman Scholz stated that there may have been students who were remote the last year or so and he wonders how this might have effected traffic.

Chairman Scholz talked about the percentage of students who might have been remote and may or may not have returned to school full time at this point. Ms. Dunn stated that the Board that they have letters from parents who are happy with the school and see an improvement on the traffic. Ms. Dunn stated that she does not see how they can spend more time on this without the expert testimony regarding the traffic.

Mr. Dubay stated that a letter came in at 3pm. Chairman Scholz does want to ask the Board if they have any additional questions.

Mr. Dubay stated that they are continuing to add mitigation techniques and they will add for those. Mr. Dubay stated that he would like to correct the record as there are not Windham Academy parents and students running around in front of the other units. Mr. Dubay also stated that he is paying some of these items out of his own pocket.

Chairman Scholz stated that there are many other uses for the properties in that area.

Mr. Sullivan stated that there could be loop in the back and there would be a longer queuing area. The proposal is to expand and if they have more students, there will be more traffic according to Chairman Scholz. Mr. Dubay stated that he is hearing that they need more information and he is willing to work with staff. Mr. Dubay stated that he would hire another traffic engineer.

Mr. Dubay stated that he would like to have a meeting with the other condo members. Chairman Scholz stated that businesses change and they have to look at how variances.

Chairman Scholz invited public comment at this time.

Mr. Steven Gore, 4 Edinburg Road addressed the Board. Mr. Gore has owned property in the Industrial Way since 2010. Mr. Gore stated that traffic has become more and more of an issue and had a power point presentation for the Board. Mr. Gore stated that he was not out there more than 20 minutes and at the time, the line went down to the bottom of the hill. Mr. Gore stated that it seems there needs to be a turning light. There are 2 driveways and both driveways were blocked. The northern exit is blocked. Mr. Gore stated that there are multiple delivery trucks all day long as well. Mr. Gore stated that they have not heard from Mr. Dubay and the traffic study was just a preliminary study. Some of the numbers that are in there do not make sense to him either. Mr. Gore stated that many of these kids cannot be bused in since they come from other towns. Mr. Gore stated that there was minor accident in October that blocked his driveway. Mr. Gore stated that the issue is that the driveway is blocked. Mr. Gore stated that perhaps the school has outgrown the infrastructure of the area. Mr. Gore asked if there might be another site that is more suitable for the school. Mr. Gore stated that certainly over the last 2 years they have found an increase in the traffic. Mr. Gore stated that he did pay for the traffic study independently and it was intended to be preliminary because as far as he could tell, one had not been done. Mr. Gore stated that he located in Windham to accommodate his tractor trailer business. Mr. Gore stated that tenants have reported water pressure issues in their buildings and the buildings are located at the top of the hill. Mr. Gore also stated that some families miss their time slots and they need to park and block some of the businesses to bring their students into the building. Mr. Gore stated that the Gateway District, also developed by Mr. Gore, might be a better option for the school. Mr.

189 Gore questions if the school's expansion might have outgrown this space at this time. Chairman Scholz asked if
190 Mr. Gore has noticed a change over time and also asked how Covid has impacted the traffic. Mr. Gore stated that
191 he made the observation that they see students taking walks around some of the buildings and he did not state they
192 were from Windham Academy; Mr. Gore stated he enjoyed seeing the students walk around and get fresh air no
193 matter what building they come from. Mr. Gore is willing to participate in a broader discussion about the area.

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195 Ms. Dunn asked what comes in and out of Mr. Gore's business. Mr. Gore stated that they have tractor trailers and
196 other deliveries like Fed Ed coming in and out of their building. Ms. Gogumalla asked if he had paid for the traffic
197 study. Mr. Gore stated that he and Mr. Connors paid for the study.

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199 Mr. John Connors 70 Lowell Road addressed the Board. Mr. Connors owns 3 Industrial Drive and manages other
200 properties. Mr. Connors stated that he was here in December and then the meeting was moved to January. The
201 traffic study was done at the suggestion of police. Had a traffic study done, they might not have asked for one but
202 they did at the advice of counsel. The 497 students are the number that came from Walter; Mr. Connors stated that
203 that number is not in the minutes. Yet, 430 students are in the minutes. The two numbers were derived from
204 discussions at the first meeting on this case. Mr. Connors stated that communications from Mr. Dubay have been
205 non-existent. Mr. Connors stated that they would love to communicate but it has been a one-way street. This is an
206 industrial park and the traffic with the school may be a problem going forward. Mr. Connors runs a business and
207 his clients cannot get to his place of business. Mr. Connors asked the town if there was a school evacuation plan;
208 Mr. Connors would like to know what that plan might be.

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210 Both Mr. Gore and Mr. Connors stated that they are not sure what the solutions is and they are sympathetic to the
211 needs of the families at the school.

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213 Chairman Scholz asked about secondary access since another Board member brought it up. Mr. Connors and Mr.
214 Gore stated that a secondary access would certainly help but Mr. Connors state he is not sure how that might
215 happen. Mr. Connors submitted the accident report to the Board.

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217 Mr. Al Spear (sp?) of Bedford NH addressed the Board and he owns the building that Windham Academy is
218 currently located. Mr. Spear stated he hears the concerns of the neighbors. Mr. Spear understands that they have a
219 business to run and they should communicate a lot better; they have a point and he thinks there is a way to all
220 coexist. A lot of the kids are happy there according to Mr. Spear. There is an emergency plan and it has to be
221 approved by the state. Mr. Spear discussed the school having another exit. Mr. Spear wrote a letter to Mr. Sullivan
222 to see if he might sell the piece of property that could be the access if the town is willing to sell them the small
223 sliver of land. The additional school or building could also help as the pickup could be staged. Mr. Spear also
224 discussed water and that they may be able to access public water on the Route 111 side of the property. Mr. Spear
225 would like to be able to utilize the current playground and expand upon it. Mr. Spear talked about expanding to
226 have a gymnasium and a STEAM lab and other amenities for the students. Mr. Spear believes there is a solution to
227 the complex traffic issues. Mr. Spear talked about the fact that there is a shoulder on the road so an emergency lane
228 can be built to help alleviate the traffic. Chairman Scholz stated that the Board would like to see these solutions
229 when the applicant returns before the Board. Mr. Spear stated that he understands that some of these solutions may
230 be long term such as building out the next building and buying the sliver of land. Ms. Stith asked if they might be
231 using a portable building in the interim to expansion. Mr. Spear stated that they may have to do that; the
232 construction needs to begin in June when school is let out.

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234 Mr. Chris Baker, 5 Chestnut St. addressed the Board. Mr. Baker is one of the original founders of the school. Mr.
235 Baker stated that 3 of his 4 kids attend the school, it has been a labor of love for him over the years. Mr. Baker
236 stated that the landlord has been a very standup guy, he is a problem solver. Mr. Baker stated he is on the Board of
237 trustees. There has been a lot of talk as to how they got the approvals to build the school, there is a charter each
238 year that needs to be fulfilled each year. Mr. Baker stated that there are not a lot of new cars being added to the

239 traffic since many of the students are siblings of students who currently attend. The school times will change for
240 the 7th and 8th graders. There will be spill over space for the additional building according to Mr. Baker. Mr. Baker
241 stated that there are only 28 available spots in the school after siblings register for classes. 12-25 students take a
242 bus on any given day according to Mr. Baker. There are 299 students and 50 students are from Windham; the rest
243 of the students come from other towns and there is a lot of carpooling among families. The capacity for the school
244 is 328 students. Mr. Baker asked if the pictures would be able to be presented. Mr. Baker stated that when the
245 traffic study was done, there were pneumatic tubes so a lot of the traffic is not from the school but from business.
246 Yet, Chairman Scholz stated that that is the point, there this is an area for business and the school is not the only
247 traffic. Chairman Scholz stated that the traffic study was conducted to discuss the current conditions, not just the
248 school traffic. Mr. Baker spent some time explaining that even though the traffic in the photos was present, yet, the
249 pictures are showing that the cars are not blocking exits and entrances. Mr. Baker stated that the Windham
250 Academy families are seeking structure and stability in the midst of a pandemic and they would like to be good
251 neighbors as well. Mr. Baker stated that there was only remote learning in March-June of 2020; all students were
252 in person this academic year. Chairman Scholz asked if Mr. Baker was present at the 2018 meeting when the
253 variance was granted. Mr. Baker said he had. The Board and Mr. Baker discussed where the information might be
254 see where the school was approved to have a school up through Grade 8. Mr. Baker stated that the original plan
255 was up to Grade 4 and as the population progressed, the school would raise each year by grade. Mr. Baker stated
256 that the additional building will be needed to expand appropriately for students.

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258 The Chairman called a brief recess.

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260 Ms. Brandy Shidow (sp?), 193 Main St. in Hampstead, NH addressed the Board. Ms. Shidow stated that she agrees
261 with Ms. Baker. Of the 299 students, that makes up 211 families according to Ms. Shidow. Ms. Shidow stated that
262 she understands there have been traffic backups at certain times. Ms. Shidow stated that the families have made a
263 concerted effort to streamline the process especially in the last few weeks. Ms. Shidow stated that the times that
264 families are lining up are very limited. Ms. Shidow explained the pickup and drop off process to the Board. Ms.
265 Shidow and the Board discussed how many new families might be added to this number

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267 Ms. Bushra Zawaydeh, 46 Bear Hill Rd addressed the Board. Ms. Zawaydeh stated that her children are very
268 happy at the Windham Academy and one of the important points for her family was that the school would
269 eventually go up to Grade 8. Ms. Zawaydeh stated that traffic is going to be a challenge at every school. Ms.
270 Zawaydeh stated that there are many different signage and traffic solutions such as: flashing signs, flashing lights,
271 an actual school sign or other traffic items. Ms. Zawaydeh stated that the pickup and drop off has been much easier
272 than other schools for her over the years.

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274 Ms. Pamela Merrill Solomon, 13 Cricket Lane in Sandown, NH. Ms. Solomon is the parent of a third grader and
275 an incoming kindergartener. Ms. Solomon stated that there is no other school like this in the area. Ms. Solomon
276 stated that her daughter loves the school and she and other families would like to be able to provide this education
277 to their children through Grade 8. Ms. Solomon is in favor of the expansion project and the families have worked
278 hard to help alleviate the traffic challenges. Ms. Solomon stated that some of the traffic in the area is also from the
279 Windham Coop.

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281 Ms. Kim Palmer, 17 Jacob Road addressed the Board. Ms. Palmer stated that she and her husband are frequent
282 flyers on Industrial Drive since 2015, Ms. Palmer stated that all 3 kids have gone through Windham Coop and 2 of
283 her 3 kids are at Windham Academy. Ms. Palmer stated that the back up is for the Coop not for Windham
284 Academy. There is also Green Sprouts and OT Works for Kids on the street as well; this place is particularly hard
285 to find a spot for this service as well.

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287 Chairman Scholz stated they need to continue to a date certain. Mr. Dubay stated that 4 weeks would be plenty.
288 Mr. Dubay stated that he would like to meet with the traffic engineer in the next week.

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The owner of the property stated that traffic is going to happen; it is about doing what is better for the kids. Having the kids staged to have staggered drop offs and pickups has been helpful. Having support to the school has also been helpful and he does not want to discredit the concerns. Also, he does not want the conversation to be about adding classes, it is about the current school situation.

Vice Chair Shea would like to know the times of day of the traffic accidents.

A motion was made by Ms. Stith to continue Case #59-2021 to April 12th at 7 pm. Seconded by Vice Chair Shea. Vote 5-0. Motion passes.

A motion was made by Ms. Stith to approve the January 25th, 2022 draft minutes as amended. Seconded by Vice Chair Shea. Vote 5-0. Motion passes.

A motion was made by Ms. Skinner to adjourn at 10:22pm. Seconded by Ms. Stith. Vote 5-0. Motion passes.

Respectfully submitted by Anitra Lincicum

Draft